

Brian J. Mankin, Esq. [CSB No. 216228]
 Peter J. Carlson, Esq. [CSB No. 295611]
 FERNANDEZ & LAUBY LLP
 4590 Allstate Drive
 Riverside, CA 92501
 Tel: (951) 320-1444
 Fax: (951) 320-1445
 bjm@fernandezlauby.com
 pjc@fernandezlauby.com

Attorneys for Plaintiff ALYSSA HERNANDEZ, individually, on a representative basis, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO

ALYSSA HERNANDEZ, individually,
 on a representative basis, and on behalf
 of all others similarly situated;

Plaintiff,

vs.

WAL-MART ASSOCIATES, INC., a
 Delaware Limited Liability Corporation;
 and DOES 1 through 10, inclusive;

Defendants.

Case No.: 5:17-cv-01485 AB (KKx)

FIRST AMENDED COMPLAINT
*Filed As a Matter of Right Pursuant to
 Cal. Labor Code § 2699.3(a)(2)(C)*

CLASS ACTION CLAIMS

- (1) Failure to Pay Wages for All Hours Worked;
- (2) Failure to Provide Meal Periods;
- (3) Failure to Provide Rest Breaks;
- (4) Failure to Timely Pay Final Wages
- (5) Failure to Provide Accurate Itemized Wage Statements; and
- (6) Unfair and Unlawful Competition

PAGA CLAIMS

- (7) Failure to Pay Wages for All Hours Worked;
- (8) Failure to Provide Meal Periods;
- (9) Failure to Provide Rest Breaks;
- (10) Failure to Timely Pay Wages; and
- (11) Failure to Provide Accurate Itemized Wage Statements;

Complaint filed: 6/8/17

1 Plaintiff ALYSSA HERNANDEZ (“Plaintiff”), on behalf of herself, on a
2 representative basis, and on behalf of others similarly situated, complains and
3 alleges as follows.

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against her employer, WAL-MART
6 ASSOCIATES, INC., and DOES 1 through 10, (collectively the “Defendants”) on
7 behalf of herself, and all other similarly situated current and former non-exempt
8 employees who were employed by Defendants in the State of California and who
9 worked in a Walmart Fulfillment Center (hereinafter, the “Class” or “Represented
10 Employees”), for California Labor Code violations stemming from Defendants’
11 failure to pay wages for all hours worked, failure to provide mandated meal
12 periods, failure to provide rest breaks, failure to timely pay wages, and failure to
13 provide accurate itemized wage statements.

14 2. Plaintiff has been employed by Defendants as a forklift operator at the
15 Walmart Fulfillment Center since approximately July 2016.

16 3. Plaintiff alleges on information and belief that the Represented
17 Employees were subjected to the same policies, working conditions, and
18 corresponding wage and hour violations to which Plaintiff was subjected during
19 their employment.

20 4. At all relevant times during Plaintiff’s employment with Defendants,
21 she was required to go through a security checkpoint when leaving the building
22 during meal periods and at the end of her shift. However, Defendants required
23 Plaintiff to clock-out from its timekeeping system before going through the
24 security checkpoint. Although it often took 15 to 20 minutes for Plaintiff to get
25 through the security checkpoint, Defendants did not provide any compensation to
26 Plaintiff for this time spent subject to the control of Defendants. As a result,
27 Plaintiff was not fully compensated for all minimum, regular, and overtime wages.

28 5. Furthermore, at all relevant times, Plaintiff was denied mandated 30-

1 minute off-duty meal periods, as mandated by California law, during her
2 employment with Defendants. Defendant provided Plaintiff and the Represented
3 Employees with 30 minutes for meal periods, but this 30-minute period was
4 inclusive of the employee leaving the work area, waiting in a line to clock-out,
5 waiting in a long line to go through the security checkpoint, and then standing in
6 line to clock-in at the end of end of the meal period. As Plaintiff and the
7 Represented Employees were only allotted 30 minutes for each meal period, yet
8 were under the control of the company when waiting clock in/out and to go
9 through the security checkpoint, Plaintiff and the Represented Employees were
10 regularly not provided with uninterrupted meal periods of at least 30 minutes, as
11 required by California law. Also, the practical effect of Defendant's policy of
12 requiring employees to go through a security checkpoint to leave the premises for
13 meal periods often resulted in Plaintiff and the Represented Employees staying on
14 the premises and otherwise not exercising their right to leave the facility, as doing
15 so would further reduce the length of their meal periods.

16 6. Also, at all relevant times, Plaintiff was not provided with 10 minutes
17 of net rest break time for every 4 hours worked, or major fraction thereof, as
18 mandated by California law. Plaintiff and the Represented Employees were not
19 permitted to take rest breaks at their station and, instead, were required to take rest
20 breaks only in designated rest areas. As a result of the time required to travel to
21 and from the designated rest areas, Plaintiff and the Represented Employees were
22 not provided net rest periods of at least 10 minutes for each 4-hour work period, or
23 major fraction thereof.

24 7. Plaintiff further alleges that Defendants engaged in the practice of
25 failing to pay all wages due and owing to Plaintiff and the Represented Employees
26 at the time their employment ended with Defendants, including, but not limited to
27 regular wages, minimum wages, wage premiums, among others.

28 8. Plaintiff also alleges that she and the Represented Employees did not

1 receive accurate itemized wage statements that fully complied with the
 2 requirements of Labor Code § 226(a) due to violations including: failure to
 3 accurately state gross wages earned; failure to accurately state total hours worked;
 4 failure to accurately state all deductions; failure to accurately state net wages
 5 earned; and, failure to state all applicable hourly rates in effect during the pay
 6 period and the corresponding number of hours worked at each hourly rate by the
 7 employee.

8 9. Plaintiff alleges that Defendants' violations of the wage and hour
 9 components of the Labor Code and IWC Wage Orders enabled it to decrease
 10 expenses and to increase its level of productivity and profits, thereby allowing
 11 Defendants to gain an unfair advantage over its competitors.

12 10. At all material times, Defendant and DOES 1 through 10 were and/or
 13 are Represented Employees' employers or persons acting on behalf of Represented
 14 Employees' employer, within the meaning of California Labor Code § 558, who
 15 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
 16 Labor Code or any provision regulating hours and days of work in any Order of the
 17 Industrial Welfare Commission and, as such, are subject to penalties for each
 18 underpaid employee as set forth in Labor Code §§ 558(a)(1) and (2).

19 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable,
 20 and monetary relief against Defendants and each of them, on behalf of herself and
 21 the Represented Employees to recover, among other things, unpaid wages and
 22 benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to
 23 California Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 221, 223, 225.5,
 24 226, 226.3, 226.7, 256, 510, 512, 1194, and 1194.2, among possibly other sections
 25 inadvertently omitted. Plaintiff also reserves the right to name additional
 26 representatives throughout the State of California.

27 **II. JURISDICTION**

28 12. This Court has jurisdiction over the claims for relief of Plaintiff and

1 the Represented Employees pursuant to the Labor Code and the IWC Wage
2 Orders, among other sections.

3 **III. VENUE**

4 13. Venue as to each Defendant is proper in this Court, pursuant to Code
5 of Civil Procedure § 395(a). Defendants transact business in San Bernardino
6 County and the unlawful acts alleged herein have a direct effect on Plaintiff and
7 the Represented Employees in San Bernardino County. Furthermore, Defendants
8 employed or employ Plaintiff and Represented Employees in San Bernardino
9 County.

10 **IV. PARTIES**

11 **Plaintiff**

12 14. Plaintiff and Class Representative ALYSSA HERNANDEZ has been
13 employed by Defendants since approximately July 2016, and performed work for
14 Defendants in San Bernardino County, California.

15 **Defendants**

16 15. Plaintiff is informed and believes and thereon alleges that Defendant
17 WAL-MART ASSOCIATES, INC., is a Delaware Limited Liability Company
18 authorized to and doing business in San Bernardino County, California, and is
19 and/or was the legal employer of Plaintiff and the Represented Employees during
20 the applicable statutory periods.

21 16. Plaintiff is ignorant of the true names, capacities, relationships, and
22 extent of participation in the conduct herein alleged, of Defendants sued herein as
23 DOES 1 through 10, inclusive, but on information and belief alleges that those
24 Defendants are legally responsible for the payment of penalties and damages to
25 Plaintiff and all Represented Employees by virtue of Defendants' unlawful actions
26 and practices and therefore sue these Defendants by such fictitious names. Plaintiff
27 will amend this complaint to allege the true names and capacities of the DOE
28 Defendants when ascertained.

1 17. Plaintiff is informed and believes, and based thereon alleges, that
 2 Defendants, and each of them, acted in all respects pertinent to this action as the
 3 agent of the other Defendants, carried out a joint scheme, business plan or policy in
 4 all respect pertinent hereto, and the acts of each Defendant are legally attributable
 5 to the other Defendants. On information and belief, a unity of interest and
 6 ownership between each Defendant exists such that all Defendants acted as a
 7 single employer of Plaintiff and other similarly situated employees.

8 **V. CLASS ACTION ALLEGATIONS**

9 18. Plaintiff incorporates the preceding paragraphs of the Complaint as if
 10 fully alleged herein.

11 19. Plaintiff brings this action on behalf of herself and all others similarly
 12 situated as a class action pursuant to Code of Civil Procedure § 382.

13 20. The relevant time period for this class action is defined as the time
 14 period beginning four years prior to the filing of this action until judgment is
 15 entered (the “Relevant Time Period”).

16 21. The Class, also referred to as the “Represented Employees,” that
 17 Plaintiff seeks to represent is defined as follows:

18 **Walmart Class**

19 All current and former non-exempt employees
 20 employed by Defendants in the State of California
 21 and who worked in a Walmart Fulfillment Center
 22 at any time during the Relevant Time Period.

23 22. Plaintiff also seeks to represent the following subclasses:

24 **Security Checkpoint Subclass**

25 All Represented Employees who were required to
 26 go through a security checkpoint during a meal
 27 period and/or at the end of his/her shift during the
 28 Relevant Time Period.

Meal Break Subclass

All Represented Employees who worked a shift in excess of 5 hours during the Relevant Time Period.

Rest Break Subclass

All Represented Employees who worked a shift of at least 3.5 hours during the Relevant Time Period.

Waiting Time Penalty Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action and ending when final judgment is entered.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action and ending when final judgment is entered.

23. Plaintiff reserves the right to amend or modify the class and subclass descriptions with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

24. Plaintiff, as Class Representative, is a member of the class and subclasses that she seeks to represent.

25. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

26. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

1 27. **Commonality:** There are questions of law and fact common to the
2 class which predominate over any questions affecting only individual members of
3 the class, including without limitation:

4 i. Whether Defendants violated the California Labor Code and
5 applicable IWC Wage Order by failing to pay wages to Plaintiff and the Security
6 Checkpoint Subclass for all hours worked, including minimum, regular, and
7 overtime wages;

8 ii. Whether Defendants violated the California Labor Code and
9 applicable IWC Wage Order by failing to provide mandated meal periods to
10 Plaintiff and Meal Period Subclass and whether Defendants failed to compensate
11 Plaintiff and the Meal Period Subclass with one additional hour of wages for each
12 instance when a mandated meal period was not provided;

13 iii. Whether Defendants violated the California Labor Code and
14 applicable IWC Wage Order by failing to provide paid rest breaks to Plaintiff and
15 Rest Break Subclass and whether Defendants failed to compensate Plaintiff and the
16 Rest Break Subclass with one additional hour of wages for each instance when a
17 paid rest break was not provided;

18 iv. Whether Defendants violated the California Labor Code by
19 failing to pay all wages due upon separation of employment between Defendants
20 and Plaintiff and the Security Checkpoint Subclass, whether such separation was
21 voluntary or involuntary;

22 v. Whether Defendants violated the California Labor Code by
23 failing to provide Plaintiff and Represented Employees with complete, accurate,
24 itemized wage statements;

25 vi. Whether Defendants violated California Business &
26 Professions Code §§ 17200 *et seq.* due to the: failure to pay wages for all hours
27 worked; failure to provide mandated meal periods; failure to provide mandated
28 paid rest breaks; and, failure to timely pay final wages;

vii. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 256, 510, 512, 1194, and 1194.2, among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

viii. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

28. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay wages for all hours worked, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

29. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representatives' counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

30. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment

1 will allow those similarly situated persons to litigate their claims in the manner that
2 is most efficient and economical for the parties and the judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES FOR ALL HOURS WORKED**

5 (Labor Code §§ 221, 223, 1194, 1194.2, 1197; IWC Wage Order § 4)

6 (*Plaintiff and the Security Checkpoint Subclass*)

7 31. Plaintiff incorporates the preceding paragraphs of the Complaint as if
8 fully alleged herein.

9 32. Plaintiff and members of the Security Checkpoint Subclass were not
10 exempt from the requirement to be paid at least the applicable California minimum
11 wage throughout the statutory period for each hour worked.

12 33. At all relevant times herein, Plaintiff and members of the Security
13 Checkpoint Subclass were required to go through a security checkpoint when
14 leaving the building for a meal period and/or at the end of their shift. However,
15 Defendants required Plaintiff and members of the Security Checkpoint Subclass to
16 clock-out from its timekeeping system before going through the security
17 checkpoint. Although it often took 15 to 20 minutes for Plaintiff and members of
18 the Security Checkpoint Subclass to get through the security checkpoint,
19 Defendants did not provide any compensation to Plaintiff and the Security
20 Checkpoint Subclass for this time spent subject to the control of Defendants. As a
21 result, Plaintiff and the Security Checkpoint Subclass were not fully compensated
22 for all minimum and regular wages.

23 34. As a result of Defendants' policy or practice described above, Plaintiff
24 and members of the Security Checkpoint Subclass were required to perform off-
25 the-clock work that Defendants either knew or should have known they were
26 performing.

27 35. Consequently, Defendants violated California Labor Code laws and
28 minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC

1 Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

2 36. Also, Plaintiff and members of the Security Checkpoint Subclass were
3 “non-exempt” employees of Defendants who did not receive proper protections
4 and benefits of the laws governing payment of overtime wages.

5 37. Labor Code § 204 requires that the employer timely pay all overtime
6 wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order
7 § 3(A) provide that any work performed in excess of eight (8) hours in one
8 workday or in excess of forty (40) hours in any one workweek shall be
9 compensated at the rate of no less than one and one-half times the regular rate of
10 pay for an employee. Furthermore, any work performed in excess of twelve (12)
11 in one workday shall be compensated at twice the regular rate of pay for an
12 employee.

13 38. As a result of Defendants’ failure to include the time spent by Plaintiff
14 and members of the Security Checkpoint Subclass going through the security
15 checkpoint after clocking out of the timekeeping system, Defendants failed to
16 provide proper overtime compensation to Plaintiff and the Security Checkpoint
17 Subclass for hours worked in excess of 8 and/or 12 per day and/or 40 per week.

18 39. Defendants violate Labor Code §§ 204 and 510 and the applicable
19 IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Security
20 Checkpoint Subclass because Defendants failed to pay Plaintiff and members of
21 the Security Checkpoint Subclass for all hours worked, including overtime hours,
22 and required Plaintiff and the Security Checkpoint Subclass to work without being
23 properly compensated for all overtime wages earned.

24 40. Plaintiff is informed and believes and thereon allege that Defendants
25 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the
26 Security Checkpoint Subclass for each hour worked in violation of Labor Code §§
27 204, 221-223, 510, 1194 and 1197.

28 41. Defendants’ conduct was willful, as Defendants knew that Plaintiff

1 and the Security Checkpoint Subclass were entitled to be paid wages throughout
 2 the statutory period for each hour worked, including proper minimum and overtime
 3 wages, yet Defendants chose not to pay them in accordance thereto.

4 42. At all material times, Defendants DOES 1 through 10 were and/or are
 5 Plaintiff and the Security Checkpoint Subclass' employers or persons acting on
 6 behalf of Plaintiff and the Security Checkpoint Subclass' employer, within the
 7 meaning of California Labor Code § 558, who violated or caused to be violated
 8 Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the
 9 California Labor Code regulating hours and days of work respectively.

10 43. During Plaintiff's and the Security Checkpoint Subclass' employment,
 11 Defendants failed to pay them all wages to which they were entitled, thereby
 12 receiving an economic benefit.

13 44. As a result of Defendants' wrongful conduct, Plaintiff and the
 14 Security Checkpoint Subclass have been damaged in amounts to be proven at trial.

15 45. Plaintiff, on behalf of herself and the Security Checkpoint Subclass,
 16 seeks recovery of all unpaid wages, including unpaid minimum, regular, and
 17 overtime wages, liquidated damages, penalties, interest, attorneys' fees and costs
 18 of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an
 19 amount to be proven at trial.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

23 (*Plaintiff and the Meal Period Subclass*)

24 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if
 25 fully alleged herein.

26 47. Plaintiff and members of the Meal Period Subclass are and/or were
 27 "non-exempt" employees of Defendants who did not receive proper protections
 28 and benefits of the laws governing mandatory meal periods.

1 48. Labor Code § 226.7 requires employers, including Defendants, to
2 provide non-exempt employees with meal periods as mandated by the Industrial
3 Welfare Commission.

4 49. Labor Code § 512(a), in part, provides that employers, including
5 Defendants, may not employ an employee for a work period of more than five
6 hours per day without providing an employee the opportunity to take an
7 uninterrupted meal period of not less than 30 minutes, except that if the total work
8 period per day of the employee is no more than six hours, the meal period may be
9 waived by mutual consent of both the employer and the employee. Employers
10 may not employ an employee for a work period more than 10 hours per day
11 without providing the employee with a second meal period of not less than 30
12 minutes.

13 50. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage
14 Order § 11(B), Defendants shall pay an employee one additional hour of pay at the
15 employee's regular rate of compensation for each meal period that is missed.

16 51. At all relevant times herein, Plaintiff and members of the Meal Period
17 Subclass were denied the 30-minute meal periods to which they were entitled.

18 52. At all relevant times, Defendants employed a policy and practice that
19 provided Plaintiff and members of the Meal Period Subclass with 30 minutes for
20 meal periods, but this 30-minute period was inclusive of the employee leaving the
21 work area, waiting in a line to clock-out, waiting in a long line to go through the
22 security checkpoint, and then standing in line to clock-in at the end of end of the
23 meal period. As Plaintiff and members of the Meal Period Subclass were only
24 allotted 30 minutes for each meal period, yet were under the control of the
25 company when waiting to clock in/out and to go through the security checkpoint,
26 Plaintiff and members of the Meal Period Subclass were regularly not provided
27 with uninterrupted meal periods of at least 30 minutes, as required by California
28 law.

1 53. Also, the practical effect of Defendant's policy described above
2 resulted in Plaintiff and members of the Meal Period Subclass being forced to stay
3 on the premises for their meal periods, and otherwise not exercising their right to
4 leave the facility, as leaving the premises would require a lengthy wait in the
5 security checkpoint line, which would intrude into their meal periods.

6 54. Defendants violated Labor Code §§ 226.7, 512, and the applicable
7 IWC Wage Order every pay period with respect to Plaintiff and the Meal Period
8 Subclass because Plaintiff and the Meal Period Subclass were not provided with all
9 mandatory meal and Defendants failed to pay Plaintiff and the Meal Period
10 Subclass one additional hour of compensation in lieu thereof.

11 55. At all relevant times herein, Defendants failed to provide Plaintiff and
12 the Meal Period Subclass all mandated meal periods and failed to pay wage
13 premiums in lieu of mandated meal or rest periods, thereby receiving an economic
14 benefit.

15 56. On information and belief, Plaintiff and the Meal Period Subclass did
16 not voluntarily or willfully waive the mandated meal periods. Any expressed or
17 implied waivers obtained from Plaintiff and the Meal Period Subclass were not
18 willfully obtained, were not voluntarily agreed to, were a condition of
19 employment, or were a part of a contract of an unlawful adhesion. Defendants did
20 not permit or authorize Plaintiff and the Meal Period Subclass to take meal periods
21 in accordance with California law.

22 57. By their failure to provide Plaintiff and the Meal Period Subclass with
23 meal periods as required by California law, and failing to pay one hour of
24 additional wages in lieu of each meal period not provided, Defendants willfully
25 violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11. Accordingly,
26 Defendants are liable for one hour of additional wages at the employee's regular
27 rate of compensation for each work day that a meal period and/or paid rest break
28 was not lawfully provided in an amount to be proven at time of trial.

58. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal Period Subclass for penalties, reasonable attorneys' fees, costs, and interest under Labor Code §§ 218.5, 218.6, and 1194 and/or as permitted by law.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code § 226.7 and 512; IWC Wage Order § 12)

(Plaintiff and the Rest Break Subclass)

59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

60. Plaintiff and members of the Rest Break Subclass are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

61. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

62. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

63. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

64. At all relevant times herein, Plaintiff and the Rest Break Subclass were not provided with 10 minutes of net rest break time for every 4 hours worked,

1 or major fraction thereof, as mandated by California law. Plaintiff and the Rest
2 Break Subclass were not permitted to take rest breaks at their station and, instead,
3 were required to take their rest breaks in designated rest areas. As a result of the
4 time required to travel to and from the designated rest areas, Plaintiff and the Rest
5 Break Subclass were not provided net rest periods of at least 10 minutes for each 4-
6 hour work period, or major fraction thereof.

7 65. Defendants violated Labor Code §§ 226.7, 512, and the applicable
8 IWC Wage Order every pay period with respect to Plaintiff and the Rest Break
9 Subclass because Plaintiff and the Rest Break Subclass were not provided with all
10 mandatory rest periods and Defendants failed to pay Plaintiff and the Rest Break
11 Subclass one additional hour of compensation in lieu thereof.

12 66. At all relevant times herein, Defendants failed to provide Plaintiff and
13 the Rest Break Subclass all mandated rest breaks and failed to pay wage premiums
14 in lieu of mandated rest periods, thereby receiving an economic benefit.

15 67. By their failure to provide Plaintiff and the Rest Break Subclass with
16 rest breaks as required by California law, and failing to pay one hour of additional
17 wages in lieu of each rest break not provided, Defendants willfully violated Labor
18 Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are
19 liable for one hour of additional wages at the employee's regular rate of
20 compensation for each work day that a meal period and/or paid rest break was not
21 lawfully provided in an amount to be proven at time of trial.

22 68. Also, as a direct result of Defendants' violations of Labor Code §§
23 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are
24 liable to Plaintiff and the Rest Break Subclass for penalties, reasonable attorneys'
25 fees, costs, and interest under Labor Code §§ 218.5, 218.6, and 1194 and/or as
26 permitted by law.

27 ///

28 ///

FOURTH CAUSE OF ACTION
FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code § 201 – 203)

(Plaintiff and the Waiting Time Penalty Subclass)

69. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

70. Plaintiff and the Waiting Time Penalty Subclass are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

71. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

72. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

73. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

74. At all relevant times here, Defendants did not provide Plaintiff and the Waiting Time Penalty Subclass with all wages due and owing upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

75. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay to Plaintiff and the Waiting Time Penalty Subclass all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant

1 to Labor Code § 203, Defendants owe Plaintiff and the Waiting Time Penalty
 2 Subclass the above-described waiting time penalty, all in an amount to be shown
 3 according to proof at trial and within the jurisdiction of this Court.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

6 (Labor Code § 226)

7 (*Plaintiff and the Wage Statement Penalties Subclass*)

8 76. Plaintiff incorporates the preceding paragraphs of the Complaint as if
 9 fully alleged herein.

10 77. Plaintiff and the Wage Statement Penalties Subclass are and/or were
 11 employees of Defendants who did not receive proper protections and benefits of
 12 the laws governing the provision of accurate itemized wage statements.

13 78. Labor Code § 226(a) requires that employers furnish its employees
 14 with written itemized wage statements, semimonthly or at the time of each
 15 payment of wages, that show the gross wages earned, total hours worked, all
 16 deductions, net wages earned, and all applicable hourly rates in effect during the
 17 pay period and the corresponding number of hours worked at each hourly rate by
 18 the employee.

19 79. Defendants violate Labor Code § 226(a) every pay period with respect
 20 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed
 21 to provide a wage statement to Plaintiff and the Wage Statement Penalties Subclass
 22 that complied with the requirements of Labor Code § 226(a) by failing to
 23 accurately state gross wages earned, failure to accurately state total hours worked,
 24 failure to accurately state all deductions, failure to accurately state net wages
 25 earned, and failure to state all applicable hourly rates in effect during the pay
 26 period and the corresponding number of hours at each hourly rate by the employee.

27 80. Defendants' failure to provide the required writing deprived Plaintiff
 28 and the Wage Statement Penalties Subclass of the ability to know, understand, and

1 question the calculation and rate of pay and hours used to calculate the wages paid
2 by Defendants. Therefore, Plaintiff and the Wage Statement Penalties Subclass
3 had no way to dispute the resulting miscalculation of wages, all of which resulted
4 in an unjustified economic enrichment to said Defendants. As a direct result,
5 Plaintiff and the Wage Statement Penalties Subclass have suffered and continue to
6 suffer, substantial losses related to the use and enjoyment of such wages, lost
7 interest on such wages and expenses and attorney's fees in seeking to compel
8 Defendants to fully perform its obligation under state law, all to their respective
9 damages in amounts according to proof at trial.

10 81. As a result of Defendants' knowing and intentional failure to comply
11 with Labor Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass
12 have suffered an injury in that each was prevented from knowing, understanding
13 and disputing the wage payments paid to them. Furthermore, Plaintiff and the
14 Wage Statement Penalties Subclass have each suffered an injury in that the failure
15 to show all wages earned on the itemized wage statements resulted in Plaintiff and
16 the Wage Statement Penalties Subclass being denied all necessary deductions,
17 payments, and withholdings owed by the employer, including, but not limited to,
18 the failure to make all necessary contributions for unemployment benefits, social
19 security benefits, proper payment of taxes and withholdings, and other mandated
20 state and federal benefits.

21 82. Plaintiff has also been injured as a result of having to bring this action
22 to attempt to obtain correct wage information following Defendants' refusal to
23 comply with many of the mandates of California's Labor Code and related laws
24 and regulations.

25 83. Labor Code § 226(e) requires said Defendants to pay the greater of all
26 actual damages or fifty dollars (\$50.00) per employee for the initial pay period in
27 which a violation occurred, and one hundred dollars (\$100.00) per employee for
28 each violation in subsequent pay periods, plus attorney's fees and costs, to Plaintiff

1 and the Wage Statement Penalties Subclass who were injured by Defendants'
 2 failure to comply with Labor Code § 226(a). The exact amount of the applicable
 3 penalty is all in an amount to be shown according to proof at trial.

4 **SIXTH CAUSE OF ACTION**

5 **UNFAIR AND UNLAWFUL COMPETITION**

6 (Business and Professions Code § 17200 *et seq.*)

7 (*Plaintiff and the Represented Employees*)

8 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if
 9 fully alleged herein.

10 85. California Business & Professions Code § 17200, *et seq.*, prohibits
 11 acts of unfair competition, which includes any “unlawful, unfair or fraudulent
 12 business act or practice.” The Represented Employees, including Plaintiff, have
 13 suffered and continue to suffer injuries in fact, due to the unfair and unlawful
 14 business practices of Defendants as alleged herein.

15 86. Defendants, and each of them, are “persons” as defined under
 16 Business & Professions Code § 17021.

17 87. As alleged herein, Defendants engaged in conduct that violated
 18 California’s wage and hour laws, including failure to pay wages for all hours
 19 worked, failure to provide mandated meal periods and rest breaks, and failure to
 20 timely pay final wages, all in order to decrease their costs and increase their
 21 profits.

22 88. At all times relevant herein, Defendants did not pay Plaintiff and the
 23 Represented Employees wages and monies and other financial obligations to which
 24 they were entitled.

25 89. As a result of Defendants’ failure to comply with the Labor Code and
 26 IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages
 27 and monies, all in an amount to be shown according to proof at trial. Defendants’
 28 ongoing violations of the foregoing statutes and laws constitute a violation of Bus.

1 & Prof. Code § 17200, *et seq.*

2 90. Defendants' violations of the California Labor Code and IWC Wage
3 Orders and its scheme to lower its payroll costs as alleged herein, constitute
4 unlawful and unfair business practices because it was done in a systematic manner
5 over a period of time to the detriment of the Plaintiff and all others similarly-
6 situated.

7 91. Defendants' conduct, as alleged herein, has been, and continues to be,
8 unfair, unlawful, and harmful to Plaintiff, other Represented Employees, and to the
9 general public. Plaintiff seeks to enforce important rights affecting the public
10 interest within the meaning of Code of Civil Procedure § 1021.5.

11 92. A violation of California Business & Professions Code § 17200, *et*
12 *seq.* may be predicated on the violation of any state or federal law. All of the acts
13 described herein as violations of, among other things, the California Labor Code
14 and IWC Wage Orders, are unlawful and in violation of public policy, and in
15 addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and
16 thereby constitute unfair, unlawful and/or fraudulent business practices in violation
17 of California Business and Professions Code §§ 17200, *et seq.*

18 93. Plaintiff, individually, and on behalf of the Represented Employees,
19 has no plain, speedy, and/or adequate remedy at law to redress the injuries which
20 he has suffered as a consequence of Defendants' unfair, unlawful and/or fraudulent
21 business practices. As a result of the unfair, unlawful and/or fraudulent business
22 practices described above, Plaintiff, individually, and on behalf of the Represented
23 Employees, has suffered and will continue to suffer irreparable harm unless
24 Defendants, and each of them, are restrained from continuing to engage in said
25 unfair, unlawful and/or fraudulent business practices.

26 94. Plaintiff, individually, and on behalf of the Represented Employees, is
27 entitled to, and does seek such relief as may be necessary to disgorge the profits
28 which Defendants have acquired, or of which Plaintiff and Represented Employees

1 have been deprived, by means of the above-described unfair, unlawful and/or
 2 fraudulent business practices. Plaintiff and the Represented Employees are not
 3 obligated to establish individual knowledge of the unfair practices of Defendants in
 4 order to recover restitution.

5 95. Plaintiff, individually, and on behalf of the Represented Employees, is
 6 further entitled to and do seek a declaration that the above described business
 7 practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining
 8 Defendants, and each of them, from engaging in any of the above-described unfair,
 9 unlawful and/or fraudulent business practices in the future.

10 96. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff
 11 and Represented Employees are entitled to restitution of the wages withheld and
 12 retained by Defendants during a period that commences four years prior to the
 13 filing of this complaint; a permanent injunction requiring Defendants to pay all
 14 outstanding wages due to Plaintiff and Represented Employees; an award of
 15 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
 16 applicable laws; and an award of costs.

17 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES**
 18 **OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)**

19 97. Plaintiff is an “aggrieved employee” under the PAGA as she was
 20 employed by Defendants during the applicable statutory period and suffered one or
 21 more of the Labor Code violations alleged herein. As such, Plaintiff may recover
 22 the remedies described herein in a civil action filed on behalf of herself and all
 23 other similarly situated current and former aggrieved employees against whom one
 24 or more of the alleged violations was committed.

25 98. Plaintiff seeks to recover all applicable and available PAGA remedies
 26 pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other
 27 damages as permitted by PAGA through a representative action pursuant to the
 28 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.

1 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class
2 certification of the PAGA claims under Code of Civil Procedure § 382.

3 99. Pursuant to Labor Code § 2699.3(a), on June 8, 2017, Plaintiff gave
4 written notice by online filing to the Labor and Workforce Development Agency
5 (“LWDA”) and by certified mail to Defendant WAL-MART ASSOCIATES, INC.,
6 of the specific provisions of the Labor Code alleged to have been violated,
7 including the facts and theories to support the alleged violations. More than sixty-
8 five (65) days have elapsed since the date Plaintiff provided written notice of the
9 claims alleged herein without the LWDA assuming jurisdiction over the claims
10 alleged. Accordingly, Plaintiff has fully satisfied her administrative prerequisites to
11 suit under the PAGA.

12 **SEVENTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR**

14 **FAILURE TO PAY WAGES FOR ALL HOURS WORKED**

15 (Labor Code §§ 221, 223, 1194, 1194.2, 1197; IWC Wage Order § 4)

16 100. Plaintiff incorporates the preceding paragraphs of the Complaint as if
17 fully alleged herein.

18 101. Plaintiff and the Represented Employees were not exempt from the
19 requirement to be paid at least the applicable California minimum wage throughout
20 the statutory period for each hour worked.

21 102. At all relevant times herein, Plaintiff and the Represented Employees
22 were required to go through a security checkpoint when leaving the building for a
23 meal period and/or at the end of their shift. However, Defendants required
24 Plaintiff and the Represented Employees to clock-out from its timekeeping system
25 before going through the security checkpoint. Although it often took 15 to 20
26 minutes for Plaintiff and the Represented Employees to get through the security
27 checkpoint, Defendants did not provide any compensation to Plaintiff and the
28 Represented Employees for this time spent subject to the control of Defendants.

1 As a result, Plaintiff and the Represented Employees were not fully compensated
2 for all minimum and regular wages.

3 103. As a result of Defendants' policy or practice described above, Plaintiff
4 and the Represented Employees were required to perform off-the-clock work that
5 Defendants either knew or should have known they were performing.

6 104. Consequently, Defendants violated California Labor Code laws and
7 minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC
8 Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

9 105. Also, Plaintiff and the Represented Employees were "non-exempt"
10 employees of Defendants who did not receive proper protections and benefits of
11 the laws governing payment of overtime wages.

12 106. Labor Code § 204 requires that the employer timely pay all overtime
13 wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order
14 § 3(A) provide that any work performed in excess of eight (8) hours in one
15 workday or in excess of forty (40) hours in any one workweek shall be
16 compensated at the rate of no less than one and one-half times the regular rate of
17 pay for an employee. Furthermore, any work performed in excess of twelve (12)
18 in one workday shall be compensated at twice the regular rate of pay for an
19 employee.

20 107. As a result of Defendants' failure to include the time spent by Plaintiff
21 and the Represented Employees going through the security checkpoint after
22 clocking out of the timekeeping system, Defendants failed to provide proper
23 overtime compensation to Plaintiff and the Represented Employees for hours
24 worked in excess of 8 and/or 12 per day and/or 40 per week.

25 108. Defendants violate Labor Code §§ 204 and 510 and the applicable
26 IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the
27 Represented Employees because Defendants failed to pay Plaintiff and the
28 Represented Employees for all hours worked, including overtime hours, and

1 required Plaintiff and the Represented Employees to work without being properly
2 compensated for all overtime wages earned.

3 109. Plaintiff is informed and believes and thereon allege that Defendants
4 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the
5 Represented Employees for each hour worked in violation of Labor Code §§ 204,
6 221-223, 510, 1194 and 1197.

7 110. As a result of the unlawful employment practices alleged herein,
8 Plaintiff seeks the assessment of all applicable and available PAGA remedies
9 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs,
10 and/or any other damages permitted under the PAGA.

11 **EIGHTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE MEAL PERIODS**

13 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

14 111. Plaintiff incorporates the preceding paragraphs of the Complaint as if
15 fully alleged herein.

16 112. Plaintiff and the Represented Employees are and/or were "non-
17 exempt" employees of Defendants who did not receive proper protections and
18 benefits of the laws governing mandatory meal periods.

19 113. Labor Code § 226.7 requires employers, including Defendants, to
20 provide non-exempt employees with meal periods as mandated by the Industrial
21 Welfare Commission.

22 114. Labor Code § 512(a), in part, provides that employers, including
23 Defendants, may not employ an employee for a work period of more than five
24 hours per day without providing an employee the opportunity to take an
25 uninterrupted meal period of not less than 30 minutes, except that if the total work
26 period per day of the employee is no more than six hours, the meal period may be
27 waived by mutual consent of both the employer and the employee. Employers
28 may not employ an employee for a work period more than 10 hours per day

1 without providing the employee with a second meal period of not less than 30
2 minutes.

3 115. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage
4 Order § 11(B), Defendants shall pay an employee one additional hour of pay at the
5 employee's regular rate of compensation for each meal period that is missed.

6 116. At all relevant times herein, Plaintiff and the Represented Employees
7 were denied the 30-minute meal periods to which they were entitled.

8 117. At all relevant times, Defendants employed a policy and practice that
9 provided Plaintiff and the Represented Employees with 30 minutes for meal
10 periods, but this 30-minute period was inclusive of the employee leaving the work
11 area, waiting in a line to clock-out, waiting in a long line to go through the security
12 checkpoint, and then standing in line to clock-in at the end of end of the meal
13 period. As Plaintiff and the Represented Employees were only allotted 30 minutes
14 for each meal period, yet were under the control of the company when waiting to
15 clock in/out and to go through the security checkpoint, Plaintiff and the
16 Represented Employees were regularly not provided with uninterrupted meal
17 periods of at least 30 minutes, as required by California law.

18 118. Also, the practical effect of Defendant's policy described above
19 resulted in Plaintiff and the Represented Employees being forced to stay on the
20 premises for their meal periods, and otherwise not exercising their right to leave
21 the facility, as leaving the premises would require a lengthy wait in the security
22 checkpoint line, which would intrude into their meal periods.

23 119. Defendants violated Labor Code §§ 226.7, 512, and the applicable
24 IWC Wage Order every pay period with respect to Plaintiff and the Represented
25 Employees because Plaintiff and the Represented Employees were not provided
26 with all mandatory meal and Defendants failed to pay Plaintiff and the Represented
27 Employees one additional hour of compensation in lieu thereof.

28 120. On information and belief, Plaintiff and the Represented Employees

1 did not voluntarily or willfully waive the mandated meal periods. Any expressed or
 2 implied waivers obtained from Plaintiff and the Represented Employees were not
 3 willfully obtained, were not voluntarily agreed to, were a condition of
 4 employment, or were a part of a contract of an unlawful adhesion. Defendants did
 5 not permit or authorize Plaintiff and the Represented Employees to take meal
 6 periods in accordance with California law.

7 121. As a result of the unlawful employment practices alleged herein,
 8 Plaintiff seeks the assessment of all applicable and available PAGA remedies
 9 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs,
 10 and/or any other damages permitted under the PAGA.

11 **NINTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

13 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

14 122. Plaintiff incorporates the preceding paragraphs of the Complaint as if
 15 fully alleged herein.

16 123. Plaintiff and the Represented Employees are and/or were "non-
 17 exempt" employees of Defendants who did not receive proper protections and
 18 benefits of the laws governing mandatory rest breaks.

19 124. Labor Code § 226.7 requires employers, including Defendants, to
 20 provide rest breaks to its non-exempt employees as mandated by Order of the
 21 Industrial Welfare Commission.

22 125. The IWC Wage Order § 12 states, in part, that every employer shall
 23 authorize and permit all employees to take rest periods, which insofar as
 24 practicable shall be in the middle of each work period. Employees shall receive a
 25 10-minute rest period every four hours or major fraction thereof that they are
 26 required to work. Authorized rest period time shall be counted, as hours worked,
 27 for which there shall be no deduction from wages.

28 126. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the

1 applicable Wage Order, Defendants shall pay Plaintiff one additional hour of pay
2 at her regular rate of compensation for each day that the rest period is not provided.

3 127. At all relevant times herein, Plaintiff and the Represented Employees
4 were not provided with 10 minutes of net rest break time for every 4 hours worked,
5 or major fraction thereof, as mandated by California law. Plaintiff and the
6 Represented Employees were not permitted to take rest breaks at their station and,
7 instead, were required to take their rest breaks in designated rest areas. As a result
8 of the time required to travel to and from the designated rest areas, Plaintiff and the
9 Represented Employees were not provided net rest periods of at least 10 minutes
10 for each 4-hour work period, or major fraction thereof.

11 128. Defendants violated Labor Code §§ 226.7, 512, and the applicable
12 IWC Wage Order every pay period with respect to Plaintiff and the Represented
13 Employees because Plaintiff and the Represented Employees were not provided
14 with all mandatory rest periods and Defendants failed to pay Plaintiff and the
15 Represented Employees one additional hour of compensation in lieu thereof.

16 129. As a result of the unlawful employment practices alleged herein,
17 Plaintiff seeks the assessment of all applicable and available PAGA remedies
18 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs,
19 and/or any other damages permitted under the PAGA.

20 **TENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES**

22 (Labor Code § 201 – 204)

23 130. Plaintiff incorporates the preceding paragraphs of the Complaint as if
24 fully alleged herein.

25 131. Plaintiff and the Represented Employees are and/or were “non-
26 exempt” employees of Defendants who did not receive proper protections and
27 benefits of the laws governing the timing and payment of wages.

28 132. Labor Code § 201 requires that the employer immediately pay any

1 wages, without abatement or reduction, to any employee who is discharged.

2 133. Labor Code § 202 requires that the employer pay all wages earned and
3 unpaid, without abatement or reduction, no later than 72 hours of receiving an
4 employee's notice of intent to quit or immediately at the time of quitting if at least
5 a 72-hour notice was provided.

6 134. Labor Code §§ 201-203 cause the unpaid wages of the employee to
7 continue as a penalty from the due date thereof at the same rate until paid or until
8 an action therefore is commenced, but the wages shall not continue for more than
9 thirty (30) days.

10 135. Labor Code § 204(a) states that all wages earned by a person are due
11 and payable twice during each calendar month, and further states that wages earned
12 during the first through fifteenth days of the month must be paid no later than the
13 twenty-sixth day of the month, and that wages earned between the sixteenth and
14 last day of the month must be paid by the tenth day of the following month. Labor
15 Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied
16 by the payment of wages for weekly, biweekly, or semimonthly payroll if the
17 wages are paid not more than seven calendar days following the close of the
18 payroll period.”

19 136. At all relevant times herein, Defendants did not provide Plaintiff and
20 Represented Employees with all wages due and owing, including, but not limited
21 to, regular wages, overtime wages, minimum wages, and wage premiums, among
22 others, within the time specified by Labor Code § 204.

23 137. Furthermore, Defendants did not provide Plaintiff and certain affected
24 Represented Employees with all wages due and owing, including all regular and
25 overtime wages, minimum wages, and wage premiums, within the time specified
26 by Labor Code §§ 201 or 202. Despite these violations, Defendants failed to pay
27 Plaintiff and the affected Represented Employees waiting time penalties in
28 accordance with Labor Code § 203.

1 138. Plaintiff is informed and believes and thereon alleges that, at all times
2 material to this action, Defendants had a planned pattern and practice of failing to
3 timely pay to Plaintiff and certain affected Represented Employees all wages due
4 and owing upon separation of employment as required by Labor Code §§ 201 and
5 202.

6 139. As a result of the unlawful employment practices alleged herein,
7 Plaintiff seeks the assessment of all applicable and available PAGA remedies
8 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs,
9 and/or any other damages permitted under the PAGA.

10 **ELEVENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

13 (Labor Code § 226)

14 140. Plaintiff incorporates the preceding paragraphs of the Complaint as if
15 fully alleged herein.

16 141. Plaintiff and the Represented Employees are and/or were employees
17 of Defendants who did not receive proper protections and benefits of the laws
18 governing the provision of accurate itemized wage statements.

19 142. Labor Code § 226(a) requires that employers furnish its employees
20 with written itemized wage statements, semimonthly or at the time of each
21 payment of wages, that show the gross wages earned, total hours worked, all
22 deductions, net wages earned, and all applicable hourly rates in effect during the
23 pay period and the corresponding number of hours worked at each hourly rate by
24 the employee.

25 143. Defendants violate Labor Code § 226(a) every pay period with respect
26 to Plaintiff and the Represented Employees because Defendants failed to provide a
27 wage statement to Plaintiff the Represented Employees that complied with the
28 requirements of Labor Code § 226(a) by failing to accurately state gross wages

1 earned, failure to accurately state total hours worked, failure to accurately state all
 2 deductions, failure to accurately state net wages earned, and failure to state all
 3 applicable hourly rates in effect during the pay period and the corresponding
 4 number of hours at each hourly rate by the employee.

5 144. As a result of the unlawful employment practices alleged herein,
 6 Plaintiff seeks the assessment of all applicable and available PAGA remedies
 7 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs,
 8 and/or any other damages permitted under the PAGA.

9 **VII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and
 11 all others similarly situated prays for judgment and relief against Defendants,
 12 jointly and severally, as follows:

13 1. As to the Seventh through Eleventh Causes of Action, the assessment
 14 of all applicable and available remedies under PAGA in accordance with Labor
 15 Code § 2699 and/or any other damages permitted under PAGA provided for by the
 16 California Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698,
 17 *et seq.*) as a result of Defendants' violations of the Labor Code as alleged herein;

18 2. For reasonable attorneys' fees and costs as permitted under PAGA;

19 3. That the First through Sixth Causes of Action be certified as a class
 20 action;

21 4. That Plaintiff be appointed as Class Representative;

22 5. That counsel for Plaintiff be appointed Class Counsel;

23 6. For all applicable statutory penalties recoverable under the First
 24 through Sixth Causes of Action to the extent permitted by law, including those
 25 pursuant to Labor Code and Orders of the Industrial Welfare Commission;

26 7. For reasonable attorneys' fees, costs of suit, and interest under the
 27 First through Sixth Causes of Action to the extent permitted by law, including
 28 those pursuant to the Labor Code;

1 8. For injunctive relief and/or restitution as provided by the Labor Code
2 and Business and Professions Code § 17200, *et seq.*;

3 9. For a declaratory judgment that Defendants have violated Labor Code
4 §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 223, 225.5, 226, 226.3, 226.7,
5 256, 510, 512, 558, 1174, 1174.5, 1194, and 1194.2, among other sections
6 inadvertently omitted;

7 10. For an award of damages in the amount of unpaid compensation
8 including, but not limited to, unpaid wages, benefits, and penalties according to
9 proof, including interest thereon;

10 11. For pre- and post-judgment interest; and

11 12. For such other relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 WHEREFORE, Plaintiff, on behalf of herself and all others similarly
14 situated, hereby demands a jury trial as to the First through Sixth Causes of Action
15 pled herein.
16

17
18 Dated: August 15, 2017

FERNANDEZ & LAUBY LLP

19
20 BY: /s/ Peter J. Carlson
21 Brian J. Mankin, Esq.
22 Peter J. Carlson, Esq.
23 Attorneys for Plaintiff
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